

(e) Personnel who are subject to a Department contract or grant or who are rendering consultant services to the Department and require access to classified information originated by or in the custody of the Department shall be processed for such access pursuant to procedures approved by the Assistant Attorney General for Administration.

(f)(1) The requirement that access to classified information may be granted only as is necessary for the performance of official duties may be waived, pursuant to section 4.5(a) of Executive Order 12958, for persons who:

(i) Are engaged in historical research projects; or

(ii) Have previously occupied policy-making positions to which they were appointed by the President.

(2) All persons receiving access pursuant to this paragraph (f) must have been determined to be trustworthy by the Department Security Officer as a precondition before receiving access. Such determinations shall be based on such investigation as the Department Security Officer deems appropriate. Historical researchers and former presidential appointees shall not have access to Foreign Government Information without the written permission from an appropriate authority of the foreign government concerned.

(3) Waivers of the “need-to-know” requirement under this paragraph (f) may be granted by the Department Security Officer provided that the Security Programs Manager of the Office, Board, Division, or Bureau with classification jurisdiction over the information being sought:

(i) Makes a written determination that such access is consistent with the interest of national security;

(ii) Limits such access to specific categories of information over which the Department has classification jurisdiction;

(iii) Maintains custody of the classified information at a Department facility;

(iv) Obtains the recipient’s written and signed agreement to safeguard the information in accordance with the provisions of this regulation and to authorize a review of any notes and manuscript for determination that no

classified information is contained therein; and

(v) In the case of former presidential appointees, limits their access to items that such former appointees originated, reviewed, signed, or received while serving as a presidential appointee and ensures that such appointee does not remove or cause to be removed any classified information reviewed.

(4) If access requested by historical researchers and former presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and fees may be imposed.

**§ 17.47 Denial or revocation of eligibility for access to classified information.**

(a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of Executive order 12968 shall be:

(1) Provided with a comprehensive and detailed written explanation of the basis for that decision as the national security interests of the United States and other applicable law permit and informed of their right to be represented by counsel or other representative at their own expense;

(2) Permitted 30 days from the date of the written explanation to request any documents, records, or reports including the entire investigative file upon which a denial or revocation is based; and

(3) Provided copies of documents requested pursuant to this paragraph (a) within 30 days of the request to the extent such documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), and as the national security interests and other applicable law permit.

(b) An applicant or employee may file a written reply and request for review of the determination within 30 days after written notification of the determination or receipt of the copies of the documents requested pursuant to this subpart, whichever is later.

(c) An applicant or employee shall be provided with a written notice of and

reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal.

(d) Within 30 days of receipt of a determination under paragraph (c) of this section, the applicant or employee may appeal that determination in writing to the ARC, established under §17.15. The applicant or employee may request an opportunity to appear personally before the ARC and to present relevant documents, materials, and information.

(e) An applicant or employee may be represented in any such appeal by an attorney or other representative of his or her choice, at his or her expense. Nothing in this section shall be construed as requiring the Department to grant such attorney or other representative eligibility for access to classified information, or to disclose to such attorney or representative, or permit the applicant or employee to disclose to such attorney or representative, classified information.

(f) A determination of eligibility for access to classified information by the ARC is a discretionary security decision. Decisions of the ARC shall be in writing and shall be made as expeditiously as possible. Access shall be granted only where facts and circumstances indicate that access to classified information is clearly consistent with the national security interest of the United States, and any doubt shall be resolved in favor of the national security.

(g) The Department Security Officer shall have an opportunity to present relevant information in writing or, if the applicant or employee appears personally, in person. Any such written submissions shall be made part of the applicant's or employee's security record and, as the national security interests of the United States and other applicable law permit, shall also be provided to the applicant or employee. Any personal presentations shall be, to the extent consistent with the national security and other applicable law, in the presence of the applicant or employee.

(h) When the Attorney General or Deputy Attorney General personally certifies that a procedure set forth in

this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This is a discretionary and final decision not subject to further review.

(i) This section does not limit the authority of the Attorney General pursuant to any other law or Executive Order to deny or terminate access to classified information if the national security so requires and the Attorney General determines that the appeal procedures set forth in this section cannot be invoked in a manner that is consistent with the national security. Nothing in this section requires that the Department provide any procedures under this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any reason other than denial of eligibility for access to classified information. Suitability determinations shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

## PART 18—OFFICE OF JUSTICE PROGRAMS HEARING AND APPEAL PROCEDURES

### Sec.

- 18.1 Purpose.
- 18.2 Application.
- 18.3 Definitions.
- 18.4 Preliminary hearings.
- 18.5 Hearings.
- 18.6 Conduct of hearings.
- 18.7 Discovery.
- 18.8 Recommended decision.
- 18.9 Final agency decision.
- 18.10 Rehearing.

AUTHORITY: Secs. 802-804 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473).

Secs. 223(d), 226 and 228(e) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-509, and Pub. L. 98-473).